

I. INTRODUCTION

Q. PLEASE STATE YOUR NAME AND ADDRESS.

A. My name is Philip Linse. My business address is 700 West Mineral Avenue, Littleton, Colorado 80120.

Q. WHAT IS YOUR CURRENT BUSINESS AFFILIATION?

A. I am employed by Qwest Corporation ("Qwest") as a Director, Technical Regulatory in the Local Network Organization.

Q. WHAT IS YOUR BACKGROUND?

A. I received a Bachelors degree from the University of Northern Iowa in 1994. I began my career in the telephone communications industry in 1995 when I joined the engineering department of CDI Telecommunications in Missoula, Montana. In 1998, I accepted a position with Pacific Bell as a Technology planner with responsibility of analyzing network capacity. In 2000, I accepted a position with U S WEST as a Manager, Tactical Planning. In 2001, I was promoted to a staff position in Technical Regulatory, Interconnection Planning for Qwest. In this position, I developed network strategies for interconnection of unbundled Switching, Signaling System 7 and other switching-related products. In addition, I provided network evaluation of new technologies and represented the network organization as a subject matter expert. In 2003, I was promoted to my current position as Director of Technical Regulatory in the Network organization.

Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

1 A. The purpose of my testimony is to show that CLECs can utilize modern
2 telecommunications transmission and switching technologies to provide service to mass
3 market customers without recourse to unbundled switching.
4

5 **II. SWITCH FUNCTIONALITY, CAPACITY AND AVAILABILITY**

6 **Q. WHAT IS A TELECOMMUNICATIONS SWITCH, AND WHAT ARE ITS**
7 **PRINCIPAL FUNCTIONS?**

8 A. A modern telecommunications switch is a digital electronic system designed to make
9 connections between people who want to communicate with each other. It is essentially a
10 special-purpose computer that has telephone lines connected to it. Its principal functions
11 are to:

- 12 ▪ Detect that someone wishes to make a call (provide dial tone);
- 13 ▪ Determine who the customer wants to call (detect and analyze the numbers
14 dialed);
- 15 ▪ Connect the call to the proper destination (another telephone line or a trunk line to
16 another switch);
- 17 ▪ Notify the recipient that he or she is being called (ring the telephone or signal the
18 next switch);
- 19 ▪ Determine when the called line has answered;
- 20 ▪ Monitor the call to determine when the customer has terminated the call; and
- 21 ▪ Take down the connection.

22 There are obviously many additional functions, such as billing and provision of ancillary
23 service, and much technical detail about issues such as interfaces, maintenance and

**BEFORE THE
NEW MEXICO PUBLIC REGULATION COMMISSION**

IN THE MATTER OF IMPLEMENTATION OF BATCH CUT PROCESS)	Case No. 03-00403-UT
)	
)	and
)	
IN THE MATTER OF IMPAIRMENT IN ACCESS TO LOCAL CIRCUIT SWITCHING FOR MASS MARKET CUSTOMERS)	Case No. 03-00404-UT
)	
)	
)	

**DIRECT TESTIMONY OF

MICHAEL ZULEVIC**

**FILED ON BEHALF OF

DIECA COMMUNICATIONS, INC.,

D/B/A COVAD COMMUNICATIONS COMPANY**

February 9, 2004

II. INTRODUCTION: PURPOSE AND OVERVIEW OF TESTIMONY

O: WHAT IS THE PURPOSE OF YOUR TESTIMONY?

A: The purpose of this testimony is to describe why and how there are operational, economic, and competitive factors that would impair competitive providers in serving the mass market if forced to use UNE-L, and to outline the significant, ongoing operational and business obstacles Covad faces as it attempts to partner with UNE-P voice providers to offer a bundled voice and data product in New Mexico. As it relates to the triggers and factors discussed by the FCC in the TRO with respect to unbundled switching (“UBS”) for the mass market, the operational impediments and issues I describe in my testimony are those that must be taken into account when the Commission decides whether competitors really can provide service successfully using a UNE-L strategy.

Q. WHAT IS THE GENESIS OF YOUR TESTIMONY?

A. In its Triennial Review Order, the FCC made a national finding that CLECs are “impaired” without access to unbundled local switching when providing service to the mass market. (TRO, ¶ 419). The FCC’s impairment determination was grounded in economic and operational factors – largely stemming from existing hot cut processes -- that demonstrated, to the FCC’s satisfaction, that impairment exists without access to UBS. (TRO, ¶¶ 461-484). The FCC entertained the possibility, however, that there may be certain situations in particular geographic areas where there would be no impairment without access to UBS. Accordingly, the FCC directed the state commissions, upon petition by a party seeking to overturn the impairment finding, to consider certain economic and operational

1 criteria in determining whether to reverse the national finding of impairment based
2 on those state-specific factors.

3 Here, Qwest is challenging the finding that CLECs are impaired without
4 access to UBS. My testimony is designed to illuminate for the Commission the
5 need to retain UBS unless and until Qwest corrects the operational, economic, and
6 competitive issues that arise in the context of a UNE-L delivery strategy and the
7 associated hot cut procedures that must underlie the UNE-L delivery strategy.

8 **III. UBS IMPAIRMENT AND DATA SERVICES**

9 **Q: WHAT ARE THE FACTORS THAT THE FCC IDENTIFIED WHEN**
10 **FINDING THAT CLECS ARE IMPAIRED WITHOUT ACCESS TO UBS?**

11 A: The FCC described a number of economic and operational factors that create
12 sufficient barriers to entry such that access to UBS is required. In other words,
13 when considering whether CLECs should be required to provide service via a
14 UNE loop (UNE-L) and their own switching facilities, rather than the more
15 operationally efficient and cost-effective UNE platform (UNE-P), which uses the
16 ILEC switch (which is what, after all, this proceeding is about), the FCC identified
17 factors that shed light on whether or not CLECs are impaired without access to
18 UBS. Among other things, the FCC identified Qwest's performance in
19 provisioning loops as a factor impacting the UBS impairment analysis.¹

20
21
22 ¹ Notably, it appears that the FCC did not intend to limit the Commission to looking at just these barriers,
23 because the market definition analysis requires the Commission to look at things like (1) the variation in
24 factors affecting a CLEC's ability to serve each group of customers; and (2) competitors' ability to
specifically target and serve markets profitably and efficiently using currently available technologies.
Presumably, while the FCC identified a number of "impairment" factors, such factors must also be
considered relative to the other factors the FCC identified as being relevant to the definition of the market.

1 **Q. WHAT ADDITIONAL PROBLEMS DO YOU SEE WITH QWEST'S**
2 **PROPOSED BATCH HOT CUT PROCESS?**

3 A. Qwest explained in its original batch hot cut proposal that the cost reduction
4 anticipated by its proposed batch hot cut process is based on the elimination of
5 both pre-wiring and pre-testing of the lines to be cut. The removal of these steps
6 made no sense to me given my many years of involvement with large customer hot
7 cuts. In fact, the performance of these functions in advance decreases the amount
8 of time taken on the day of cut as potential day-of-cut problems can be addressed
9 in advance and worked in conjunction with the normal work process. By not
10 doing the pre-test and pre-wiring, the only thing that will be ensured is that adverse
11 customer impacts would be commonplace. Qwest has recently revised its position
12 on pre-wiring and pre-testing but the impact on rates is still unknown.

13 **Q: YOU'VE DISCUSSED THE OPERATIONAL ISSUES ASSOCIATED**
14 **WITH QWEST'S LINE SPLITTING AND LOOP SPLITTING**
15 **MIGRATION PROCESSES. ARE YOU ALSO ADDRESSING COST**
16 **ISSUES?**

17 A. Not specifically at this time (although I have addressed some of the cost-related
18 issues raised by Qwest in its attempt to eliminate data from the hot cut process).
19 However, I reserve the right to comment on the cost of the hot cut processes once I
20 have seen Qwest's final BHC proposal and the associated proposed rates.

21 **Q. WHAT CONCLUSIONS SHOULD THE COMMISSION DRAW FROM**
22 **YOUR TESTIMONY?**

23 A: The ultimate goal of competition is to give customers choices of providers,
24 innovative services, and competitive prices. Qwest's current "process" for UNE-P

1 line splitting customers to UNE-L loop splitting customers ensures a difficult, if
2 not horrific, customer service experience. Unless Qwest develops, tests, and
3 implements a process to perform hot cuts to migrate efficiently and economically a
4 UNE-P line splitting arrangement to a UNE-L loop splitting arrangement, Covad
5 and its voice partners are impaired without access to UBS. Accordingly, until this
6 Commission approves a hot cut and batch hot process for voice plus data loops
7 that is sufficient to eliminate such impairment, unbundled local switching for the
8 mass market customers cannot be eliminated as a UNE when UBS is used to
9 provision a line splitting arrangement. The Commission thus should follow the
10 lead of the Public Utilities Commission of the State of California, when it
11 recognized in its December 2, 2003, ruling that if SBC and Verizon do not develop
12 a process to migrate line shared and line split loops with ILEC switching to line
13 splitting arrangements with CLEC switching [i.e., UNE-L loop splitting], CLECs
14 *may be* entitled to unbundled ILEC switching in line splitting arrangements even if
15 the California Commission determines that CLECs are not entitled to unbundled
16 ILEC switching in voice-only arrangements (per the impairment analysis required
17 by the Triennial Review Order). *See* Exhibit MZ-8, p. 10.

18 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

19 **A.** This concludes my Direct Testimony, however, I anticipate filing all responsive
20 testimony permitted by the Commission, and being presented for cross
21 examination at the hearing on the merits.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF IMPLEMENTATION)
OF A BATCH CUT PROCESS)
_____)**

Case No. 03-00403-UT

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AND

**IN THE MATTER OF IMPAIRMENT)
IN ACCESS TO LOCAL CIRCUIT)
SWITCHING FOR MASS MARKET)
CUSTOMERS)
_____)**

Case No. 03-00404-UT

DIRECT TESTIMONY

OF

JOHN F. FINNEGAN

ON BEHALF OF

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC. ("AT&T")

POLICY AND INTRODUCTION

February 16, 2004

1 and evaluating Qwest's operational support system ("OSS") and developing
2 performance measurements supporting those OSS. Since the issuance of the
3 Triennial Review Order, I have been concentrating my efforts on the cross over
4 point, market definition and trigger issues that are relevant to this testimony and
5 the batch hot cut process.

6 I was AT&T's representative in the Arizona and the Regional Oversight
7 Committee's ("ROC") OSS tests since their inception. I am a frequent panelist on
8 ROC OSS and Triennial Review Order discussions, and have testified in
9 proceedings in Kansas, Iowa, Minnesota, Arizona, Montana, Wyoming, Utah,
10 Idaho, Colorado, Washington, North Dakota, South Dakota, Nebraska, Oregon,
11 and New Mexico.

12 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

13 A. I am here today to provide the New Mexico Public Regulation Commission
14 ("Commission") with an introduction to the FCC's *Triennial Review Order*
15 ("*TRO*"), and to provide the policy framework supporting the need for continued
16 availability of mass market switching at TELRIC prices, as part of the unbundled
17 network element platform ("UNE-P"). My testimony is divided into three (3)
18 sections: first, an introduction to and explanation of the *TRO*; second, a
19 discussion of the public interest benefits of UNE-P; and third, an explanation of
20 the "triggers" analysis required under the *TRO*.

1 market is.”²³¹ Moreover, the FCC found that evidence that competitors using
2 their own switches for other purposes have not converted them to serve mass
3 market customers bolsters its findings that significant barriers make use of CLEC
4 switching to serve such customers uneconomic.²³² Thus, any notion that the
5 trigger analysis is simply a matter of counting switches, particularly those
6 switches used to serve the enterprise market, must be soundly rejected.

7 **E. CONCLUSION**

8 **Q. WHAT ARE YOUR CONCLUSIONS WITH RESPECT TO THE**
9 **TRIGGER ANALYSIS?**

10 **A.** There are several. First and foremost, the trigger analysis is intended to determine
11 whether and to what extent there are *actual and effective* alternatives to the
12 switching capability of the RBOC, in this case Qwest. This does not mean merely
13 counting switches. Instead, it requires that the Commission familiarize itself with
14 the facts that give rise to CLECs’ economic and operational impairment in New
15 Mexico, and exercise appropriate discretion in applying the *TRO’s* guidelines to
16 develop the quantitative and qualitative criteria necessary to determine which
17 alternative switching sources should be considered in the trigger analysis. It also
18 means performing a granular analysis, to look at “actual deployment,” i.e., the
19 places and customers that a CLEC *currently* serves, as opposed to mere
20 potentiality. That actual deployment must include service to both residential and
21 business customers, and not the mere presence of a switch serving one class of

²³¹ *Id.* (emphasis added)

²³² *Id.* n. 1365 & n. 1371.

1 customers but not the other. In addition, the qualified provider (whether a self-
2 provider or a wholesaler) must be actually serving the *entire* geographic at issue,
3 and not just a subset of that market. And lastly in this regard, the Commission
4 must assure itself that the trigger analysis has produced a rational and lasting pro-
5 competitive result. The triggers will be met only where the defined area already
6 supports multiple, active competitors using non-ILEC switching to serve the mass
7 market, under circumstances that can be expected to continue for the indefinite
8 future, without losing the competitive gains made to date. A fundamental
9 concern, and potential danger, is that the elimination of unbundled mass market
10 switching will reverse the progress of competition, and force CLECs to exit the
11 market.

12 **V. OVERALL CONCLUSION**

13 **Q. WHAT ARE YOUR OVERALL CONCLUSIONS?**

14 **A.** During the course of my testimony I have first tried to provide a brief synopsis of
15 the *TRO*, and essentially give the Commission a roadmap to follow in conducting
16 these proceedings. I have also provided an overview of the Commission's critical
17 role in the process of examining whether—as the FCC has found nationally—
18 CLECs are impaired in their attempts to enter the market here in New Mexico,
19 without the continued availability of ILEC-provided mass market switching,
20 priced at TELRIC rates. I have explained that such impairment is determined by
21 means of a two-step process, *i.e.*, an actual usage test (called a trigger analysis)
22 and a potential deployment test. Both of these tests, however, are ultimately
23 intended to answer the exact same question: whether mass market customers in

1 the defined markets will be able to obtain competitive services from multiple
2 suppliers.

3 Secondly, I have described the "unbundled network element platform" (or "UNE-
4 P") in terms of a) its role in fostering and developing local exchange competition,
5 b) the tangible economic benefits which it brings to consumers, and c) its
6 promotion of investment by CLECs and ILECs alike. I conclude that the
7 capability of UNE-P to bring competition quickly to a wide-spread area is
8 absolutely unparalleled among the available avenues for local market entry.

9 There is, quite simply, no other method an entrant can use which will allow entry
10 in a broad geographic market quickly and effectively. In addition, the benefits to
11 consumers resulting from UNE-P entry are clear, and have been independently
12 documented: an increased number of choices among providers, a broader
13 selection of offers from each provider, competitive response from the ILECs, and,
14 most importantly, falling prices. In short, UNE-P provides *real* competition and
15 *real* consumer benefits. Moreover, contrary to the claims of the ILECs, the
16 available data demonstrates that UNE-P stimulates investment by the Bells and
17 new entrants alike. In fact, the great irony of the ILECs' argument against UNE-P
18 is that they have absolutely no economic reason to promote more facilities-based
19 competition to their monopolies. They fully understand that UNE-P is a stepping
20 stone to investment in infrastructure, and they hope to remove it, and replace it
21 with a stumbling block.

22 Thirdly, I have examined the notion of defining a "geographic market" for
23 purposes of this impairment analysis. I conclude that it is useful to think of the

1 geographic market as an "impairment evaluation zone," because that is the
2 singular purpose to which they will be put. The factors to be used in establishing
3 these zones is expressly set out in the *TRO*, and include, *inter alia*, the locations
4 of customers actually being served (if any) by competitors, the variation in factors
5 affecting competitors' ability to serve each group of customers, and competitors'
6 ability to target and serve specific markets economically and efficiently using
7 currently available technologies. I also conclude that establishing these zones will
8 be a dynamic and fact-intensive process, in which it will be necessary for the
9 Commission to obtain solid data, and not rely on a one-size-fits-all approach.
10 While the FCC has said that a geographic market should be less than the entire
11 state in size, it is clear that one of the goals of the Act is to encourage broad
12 competition throughout the entire state. I conclude in my testimony that, for
13 many reasons, it makes economic sense to view the market more broadly, and as a
14 larger area, rather than a more confined area. In this context, the Commission
15 might want to consider using LATA boundaries or Qwest's service area within
16 the state as the defining characteristic of these impairment evaluation zones.
17 Whatever geographic area the Commission ultimately settles on for its
18 impairment analysis, it should not lose sight of the most important fact here: only
19 UNE-P works at a scale and scope that is necessary to support mass market
20 competition throughout New Mexico.
21 Fourth, I have provided an analysis to aid the Commission in determining the
22 crossover point at which it makes more sense to utilize a DSL application instead
23 of "POTS" to serve a multi-line customer. I conclude there, for numerous

1 reasons, that the crossover point should be set at fourteen (14) lines, meaning that
2 when a customer is served by fourteen or more lines, a CLEC should be
3 economically indifferent between UNE-P or DSI lines to serve that location.

4 Lastly, I have provided a fairly thorough examination of the so-called trigger
5 analysis found in the *TRO*, where I have reached several important conclusions.
6 Most importantly, the trigger analysis is intended to determine whether and to
7 what extent there are *actual and effective* alternatives to the switching capability
8 of the RBOC, in this case Qwest. This does not mean merely counting switches,
9 but instead requires a careful analysis of economic and operational impairment in
10 New Mexico, and the application of quantitative and qualitative criteria to
11 determine which alternative switching sources should be considered in the trigger
12 analysis. Next, I conclude that the Commission should look at "actual
13 deployment," *i.e.*, the places and customers that a CLEC *currently* serves. which
14 must include service to both residential and business customers. In addition, the
15 qualified provider (whether a self-provider or a wholesaler) must be actually
16 serving the *entire* geographic area at issue, and not just a subset of that market.
17 And lastly in this regard, the Commission must assure itself that the trigger
18 analysis has produced a rational and lasting pro-competitive result. A
19 fundamental concern, and potential danger, is that the elimination of unbundled
20 mass market switching will reverse the progress of competition, and force CLECs
21 to exit the market.

22 **Q. DOES THIS CONCLUDE YOUR TESTIMONY?**

23 **A.** Yes, it does.

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF IMPLEMENTATION)
OF A BATCH CUT PROCESS)
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Case No. 03-00403-UT

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**IN THE MATTER OF IMPAIRMENT)
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SWITCHING FOR MASS MARKET)
CUSTOMERS)
_____)**

Case No. 03-00404-UT

DIRECT TESTIMONY OF

WILLIAM H. LEHR

AND

LEE L. SELWYN

ON BEHALF OF

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.

ECONOMIC CONSIDERATIONS

February 16, 2004

**NMPRC
STAFF EXHIBIT**

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1 In April 2000, my firm, Economics and Technology, Inc. ("ETI") was engaged by the
2 New Mexico PRC to assist the Commission's efforts to devise comprehensive new rules
3 in response to the passage of House Bill No. 400 (2000 N.M. Laws, ch. 102). In that
4 assignment, ETI provided assistance in developing draft and final rules in several related
5 Commission proceedings, Utility Case Nos. 3237 (development of an expedited
6 regulatory process), 3437 (consumer protection and quality of service standards), 3438
7 (infrastructure investment and the deployment of high-speed data services), and 3439
8 (accessibility of interconnection by competitive local exchange carriers). In connection
9 with that assignment, I met with the Commission *en banc* in July 2000 to discuss the
10 project and to respond to questions by the Commissioners.

11 **A. Introduction, Purpose, and Structure of the Testimony.**

12 **Q. ON WHOSE BEHALF IS THIS TESTIMONY BEING OFFERED?**

13 **A.** Our testimony is offered on behalf of AT&T Communications of the Mountain States,
14 Inc. ("AT&T").

15 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

16 **A.** The purpose of our testimony is to provide economic guidance to the Commission in
17 interpreting and applying the FCC's recent *Triennial Review Order* ("TRO")¹ and
18 "impairment standard" to determine which Unbundled Network Elements ("UNEs")
19 should continue to be mandated under the Telecommunications Act of 1996. We focus

¹ *Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Federal Communications Commission, CC Docket No. 01-338, (Released August 21, 2003.)* ("TRO").

1 upon applying the impairment analysis to the case of unbundled switching for mass-
2 market customers.

3 **Q. PLEASE SUMMARIZE YOUR MAIN CONCLUSIONS.**

4 **A. Our testimony will explain why we reach the following primary conclusions:**

- 5 (1) The principal goal of the Telecommunications Act of 1996 ("the Act")² is to
6 establish effective competition in local telephone services. This coincides with
7 the mission of this Commission to protect and promote consumer interests.
8 Effective competition offers the best way to benefit consumers through lower
9 prices, improved quality, and expanded choice, and to encourage appropriate
10 investment in advanced communication services by providers in New Mexico.
11 The goal of promoting effective competition ought to govern the determination of
12 which UNEs to require.
- 13 (2) UNE-based competition, while still in its infancy, has played a critical role in the
14 progress made to date in the emergence of effective local exchange competition.
15 UNE-based competition, and in particular competition via UNE-P, has substantial
16 consumer benefits.
- 17 (3) In order to produce economically rational results, the FCC's "impairment"
18 standard must be applied in a manner that is consistent with a principal goal of the
19 Act, to establish effective competition. In applying the impairment standard,
20 states must consider which UNEs are necessary for additional Competitive Local
21 Exchange Carrier ("CLEC") entry to be economically viable on a market-by-
22 market basis. In the TRO, the FCC directs state commissions to make this

² 47 U.S.C. § 251 et. Seq.

1 assessment using a two-stage impairment analysis. The first stage of the
2 impairment analysis involves a “trigger” test, which provides a regulatory short
3 cut that looks at the status of actual non-UNE-based competition in order to infer
4 an absence of entry barriers.³ If the trigger test fails, then states are directed to
5 conduct a more expansive investigation of the economic viability of potential
6 non-UNE-based competition.⁴ It is important that the Commission implement
7 both elements of the impairment analysis in an economically sound manner in
8 order to ensure that consumers will not be denied the benefits of local exchange
9 competition.

- 10 (4) The FCC’s trigger tests, which rely upon an examination of current *actual* CLEC
11 competition without a particular UNE on a market-by-market basis, implies that if
12 the number of CLECs offering service without use of that UNE exceeds the
13 trigger threshold, then economic barriers to entry are presumed to be negligible.
14 The role of a trigger test is twofold: first, it provides the basis for assessing the
15 current state of competition which is useful in its own right and also helpful when
16 subsequently evaluating the case for potential competition; and second, if the
17 evidence of actual competition is sufficient, it provides a basis for concluding that
18 CLECs would not be impaired without access to the UNE. When the trigger is
19 satisfied, this avoids the burden of further analysis that could be associated with a
20 more wide-ranging consideration of *potential* competition. However, both the
21 trigger test and the more expansive investigation of potential competition are
22 intended to result in consistent impairment findings. For the conclusion implied
23 by nominal satisfaction of a trigger – *i.e.*, that economic barriers to entry are
24 negligible – to be reasonable and consistent with sound economic analysis, the
25 trigger must be applied with focus and care. Appropriate application of the
26 impairment standard, including applying the trigger test, will depend critically

³ TRO. ¶¶ 498-505.

⁴ TRO. ¶¶ 506-520.

1 upon the quality of data collected, the appropriate definition of the markets, and
2 the correct classification of CLEC competition.

3 (5) The focus of most of the debate in this proceeding and most of the discussion in
4 this testimony will be on the need for unbundled switching for the mass market,⁵
5 which is used primarily to serve residential and small business customers via the
6 UNE Platform ("UNE-P"). Markets are generally defined with respect to
7 services, customers, and geographic scope. The FCC has directed state
8 commissions to evaluate impairment in the hypothetical absence of UNE-P in
9 geographic areas that are smaller than the state as a whole, but leaves it to state
10 commissions to determine the appropriate size of the geographic market.⁶ An
11 efficient CLEC will necessarily make market entry decisions and pursue mass
12 market customers in a geographic area that is sufficiently large to permit the
13 CLEC to realize the economies of scale and scope with respect to both network
14 operations and "business" issues such as marketing, advertising, and customer
15 support.

16 (6) CLEC competition is impaired as long as UNE-P is needed to ensure that CLEC
17 competition is economically viable *throughout* the defined market.

18 **Q. HOW IS THE REST OF YOUR TESTIMONY ORGANIZED?**

19 **A.** The balance of this testimony is organized into four sections:

20 Section III explains the economic and policy context for this proceeding and how it
21 relates to the pro-competitive framework put in place by the *Telecommunications Act of*
22 *1996*.

⁵ Although the economic framework we present for applying the UNE standard applies to all UNEs, the UNE that this testimony focuses on is unbundled switching for the mass market. To simplify the discussion, we will refer to this simply as "unbundled switching" as short hand, and will add "for the mass market" only when we think additional clarification is necessary.

⁶ TRO, ¶ 495.

1 Section IV provides an economic interpretation of the TRO's impairment standard,
2 explaining how to evaluate economic barriers to entry. Additionally, this section explains
3 the economic principles to be used when defining the scope of markets (which includes
4 defining their geographic scope) and for purposes of assessing the business case for a
5 qualified, efficient CLEC.

6 Section V explains the economic and policy role of the triggers and how they should be
7 applied in the context of unbundled switching for the mass market.

8 Section VI concludes.

9 **II. UNDERSTANDING THE ECONOMIC AND POLICY CONTEXT FOR THIS PROCEEDING.**

10 **A. Local Exchange Competition is Important to Consumers.**

11 **Q. WHAT IS THE ISSUE AT STAKE IN THIS PROCEEDING?**

12 A. The principal goal of the *Telecommunications Act of 1996* ("the Act" or "Act") is to
13 establish competition in local telephone and access markets. For robust local exchange
14 competition to arise, it must be feasible for multiple CLECs to enter the market and to
15 sustain and expand their market presence. The Act recognizes that it is necessary to adopt
16 a pro-competitive framework that lowers regulatory and economic barriers to entry in
17 order to enable the emergence of efficient and effective competition. The UNE rules are
18 a critical component of this framework. These rules mandate that the Incumbent Local
19 Exchange Carrier ("ILEC") make available for lease wholesale access to individual
20 components (elements) of its local access network at nondiscriminatory, cost-based rates.

1 emergency services (E911). The fact that most cable providers do not yet offer telephony
2 services, and when they do, do not choose to market it as a substitute for basic telephone
3 service is indicative that these are not yet close substitutes for mass market, basic
4 telephone service.

5 **Q. ISN'T THERE A PROBLEM IN AN APPROACH THAT MIGHT EXCLUDE**
6 **CLECS THAT DEMONSTRATE THE VIABILITY OF ECONOMIC ENTRY**
7 **WITHOUT UNES?**

8 **A.** No. The fact that a CLEC should not be counted toward the triggers does not end the
9 impairment analysis; rather, it protects the regulatory process from being aborted
10 prematurely. Failure to satisfy the trigger signifies only that the available data of actual
11 competition is insufficient to make a reasonable inference about entry barriers. Common
12 sense indicates that if you do not have reliable data to apply the test, you should move
13 beyond the test to collect the necessary data to complete the appropriate analysis.

14 **V. CONCLUSIONS.**

15 **Q. WHAT ARE YOUR PRINCIPAL RECOMMENDATIONS TO THE**
16 **COMMISSION?**

17 **A.** The goal of our direct testimony is to assist the Commission in interpreting the TRO and
18 in adopting an appropriate economic framework for implementation of the impairment
19 standard defined therein. Such a framework will ensure that the Commission's decisions
20 in this proceeding will promote and protect the interests of all consumers in New Mexico.
21 This is best accomplished by promoting the transition to efficient and sustainable

1 competition in local telephone services, a transition that depends on rigorous enforcement
2 of the pro-competitive provisions of the Act.

3 It is now nearly eight years since the Act became law, and substantial progress has been
4 made in transitioning local markets towards competition, but much more is yet to be
5 done. The CLEC competition that is currently expanding throughout New Mexico
6 depends critically upon the availability of UNEs. A careful analysis of the economics of
7 CLEC entry will demonstrate the economic need for continuing mandatory UNE
8 provisioning.

9 Denying CLECs continued access to UNEs will raise CLEC entry costs, thereby limiting
10 CLEC expansion. *Without the spur of competition, ILECs will have a reduced incentive*
11 *to invest in advanced communications infrastructure. And, in those locales where CLECs*
12 *are induced to expand investment to retain customers currently being served by UNE-P,*
13 *there will be an increased and perverse risk of inefficient investment in legacy technology*
14 *that will threaten both CLEC and ILEC capacity with stranding.*

15 Consumers who benefit today and those that would be likely to benefit in the future from
16 expanded CLEC competition will be denied the benefits of choice and enhanced
17 efficiency that competition brings. Continued investment in advanced communications
18 infrastructure would be put unnecessarily at risk.

19 The current proceeding offers a valuable opportunity to take stock of the progress in local
20 telephone competition across New Mexico. To ensure that the Commission reaches
21 decisions that are consistent with the Act and the TRO, it is necessary for it to apply the
22 trigger test for unbundled switching to a suitably defined geographic area and to classify
23 CLECs that are counted toward satisfying the trigger threshold appropriately. That said,

1 it is essential that the data underlying that analysis be collected on a wire-center basis so
2 as to ensure that adequate data is assembled and analyzed.

3 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

4 **A. Yes.**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

**IN THE MATTER OF IMPLEMENTATION)
OF A BATCH CUT PROCESS)**

Case No. 03-00403-UT

AND

**IN THE MATTER OF IMPAIRMENT)
IN ACCESS TO LOCAL CIRCUIT)
SWITCHING FOR MASS MARKET)
CUSTOMERS)**

Case No. 03-00404-UT

DIRECT TESTIMONY OF

ARLEEN M. STARR

ON BEHALF OF

AT&T COMMUNICATIONS OF THE MOUNTAIN STATES, INC.,

**ESTABLISHING THE CROSS OVER POINT BETWEEN THE MASS
MARKET AND THE ENTERPRISE MARKET**

February 16, 2004

1 and capital budgets. From 1986 to 1990, I held various positions in the Financial
2 Regulatory Department in Chicago. My responsibilities included intrastate
3 financial analysis and providing reports and data to the regulatory commissions in
4 the Central Region. From 1992 to 1996, I worked in the product equipment
5 business, with financial responsibilities in the product management, sales, and
6 service areas. I assumed my current responsibilities in May of 1996.

7 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

8 A. The purpose of my testimony is to provide the Commission with the necessary
9 information in order to conduct an examination of factors necessary in
10 determining the so-called "cross over point" used to decide when it makes
11 economic sense for a competitive local exchange carrier ("CLEC") to serve a
12 multi-line plain old telephone service ("POTS") customer using a DS1 based
13 service.

14 **II. ESTABLISHING THE CROSS OVER POINT BETWEEN THE**
15 **MASS MARKET AND THE ENTERPRISE MARKET**

16 **A. Summary**

17 **Q. WHAT IS THE CROSS OVER POINT THAT YOU RECOMMEND THIS**
18 **COMMISSION ADOPT?**

19 A. I recommend that the commission adopt a cross over point of 10 lines.

20 **Q. HOW DID YOU ARRIVE AT THIS CONCLUSION?**

21 A. I arrived at this conclusion by determining where it made economic sense for a
22 CLEC to serve a multi-line POTS customer using a DS1 based service rather than